

HOUSE GOVERNMENT AND URBAN AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 723

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO SUBDIVISIONS; PROVIDING FOR DELEGATION OF
SUBDIVISION APPROVAL AUTHORITY IN CERTAIN CLASS A COUNTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 47-6-2 NMSA 1978 (being Laws 1973,
Chapter 348, Section 2, as amended) is amended to read:

"47-6-2. DEFINITIONS.--As used in the New Mexico
Subdivision Act:

A. "board of county commissioners" means the
governing board of a county;

B. "common promotional plan" means a plan or scheme
of operation, undertaken by a single subdivider or a group of
subdividers acting in concert, to offer for sale or lease
parcels of land where the land is either contiguous or part of
the same area of land or is known, designated or advertised as

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1 a common unit or by a common name;

2 C. "final plat" means a map, chart, survey, plan or
3 replat certified by a licensed, registered land surveyor
4 containing a description of the subdivided land with ties to
5 permanent monuments prepared in a form suitable for filing of
6 record;

7 ~~[A.]~~ D. "immediate family member" means a husband,
8 wife, father, stepfather, mother, stepmother, brother,
9 stepbrother, sister, stepsister, son, stepson, daughter,
10 stepdaughter, grandson, stepgrandson, granddaughter,
11 stepgranddaughter, nephew and niece, whether related by natural
12 birth or adoption;

13 ~~[B.]~~ E. "lease" means to lease or offer to lease
14 land;

15 ~~[C.]~~ F. "parcel" means land capable of being
16 described by location and boundaries and not dedicated for
17 public or common use;

18 ~~[D.]~~ G. "person" means any individual, estate,
19 trust, receiver, cooperative association, club, corporation,
20 company, firm, partnership, joint venture, syndicate or other
21 entity;

22 ~~[E. "final plat" means a map, chart, survey, plan~~
23 ~~or replat certified by a licensed, registered land surveyor~~
24 ~~containing a description of the subdivided land with ties to~~
25 ~~permanent monuments prepared in a form suitable for filing of~~

1 ~~record;~~

2 ~~F.~~ H. "preliminary plat" means a map of a proposed
3 subdivision showing the character and proposed layout of the
4 subdivision and the existing conditions in and around it and
5 need not be based upon an accurate and detailed survey of the
6 land;

7 ~~G.~~ I. "sell" means to sell or offer to sell land;

8 ~~H.~~ J. "subdivide" means to divide a surface area
9 of land into a subdivision;

10 ~~I.~~ K. "subdivider" means any person who creates
11 or who has created a subdivision individually or as part of a
12 common promotional plan or any person engaged in the sale,
13 lease or other conveyance of subdivided land; however,
14 "subdivider" does not include any duly licensed real estate
15 broker or salesperson acting on another's account;

16 ~~J.~~ L. "subdivision" means the division of a
17 surface area of land, including land within a previously
18 approved subdivision, into two or more parcels for the purpose
19 of sale, lease or other conveyance or for building development,
20 whether immediate or future; but "subdivision" does not
21 include:

22 (1) the sale, lease or other conveyance of any
23 parcel that is thirty-five acres or larger in size within any
24 twelve-month period, provided that the land has been used
25 primarily and continuously for agricultural purposes, in

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1 accordance with Section 7-36-20 NMSA 1978, for the preceding
2 three years;

3 (2) the sale or lease of apartments, offices,
4 stores or similar space within a building;

5 (3) the division of land within the boundaries
6 of a municipality;

7 (4) the division of land in which only gas,
8 oil, mineral or water rights are severed from the surface
9 ownership of the land;

10 (5) the division of land created by court
11 order where the order creates no more than one parcel per
12 party;

13 (6) the division of land for grazing or
14 farming activities; provided the land continues to be used for
15 grazing or farming activities;

16 (7) the division of land resulting only in the
17 alteration of parcel boundaries where parcels are altered for
18 the purpose of increasing or reducing the size of contiguous
19 parcels and where the number of parcels is not increased;

20 (8) the division of land to create burial
21 plots in a cemetery;

22 (9) the division of land to create a parcel
23 that is sold or donated as a gift to an immediate family
24 member; however, this exception shall be limited to allow the
25 seller or donor to sell or give no more than one parcel per

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1 tract of land per immediate family member;

2 (10) the division of land created to provide
 3 security for mortgages, liens or deeds of trust; provided that
 4 the division of land is not the result of a seller-financed
 5 transaction;

6 (11) the sale, lease or other conveyance of
 7 land that creates no parcel smaller than one hundred forty
 8 acres;

9 (12) the division of land to create a parcel
 10 that is donated to any trust or nonprofit corporation granted
 11 an exemption from federal income tax, as described in Section
 12 501 (c)(3) of the United States Internal Revenue Code of 1986,
 13 as amended; school, college or other institution with a defined
 14 curriculum and a student body and faculty that conducts classes
 15 on a regular basis; or ~~to any~~ church or group organized for
 16 the purpose of divine worship, religious teaching or other
 17 specifically religious activity; or

18 (13) the sale, lease or other conveyance of a
 19 single parcel from a tract of land, except from a tract within
 20 a previously approved subdivision, within any five-year period;
 21 provided that a second or subsequent sale, lease or other
 22 conveyance from the same tract of land within five years of the
 23 first sale, lease or other conveyance shall be subject to the
 24 provisions of the New Mexico Subdivision Act; provided further
 25 that a survey shall be filed with the county clerk indicating

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1 the five-year holding period for both the original tract and
2 the newly created tract;

3 [K.] M. "terrain management" means the control of
4 floods, drainage and erosion and measures required for adapting
5 proposed development to existing soil characteristics and
6 topography;

7 [L.] N. "time of purchase, lease or other
8 conveyance" means the time of signing any document obligating
9 the person signing the document to purchase, lease or otherwise
10 acquire a legal interest in land;

11 ~~[M. "common promotional plan" means any plan or
12 scheme of operation, undertaken by a single subdivider or a
13 group of subdividers acting in concert, to offer for sale or
14 lease parcels of land where such land is either contiguous or
15 part of the same area of land or is known, designated or
16 advertised as a common unit or by a common name;~~

17 N.] O. "type-one subdivision" means any subdivision
18 containing five hundred or more parcels, any one of which is
19 less than ten acres in size;

20 [O.] P. "type-two subdivision" means any
21 subdivision containing not fewer than twenty-five but not more
22 than four hundred ninety-nine parcels, any one of which is less
23 than ten acres in size;

24 [P.] Q. "type-three subdivision" means any
25 subdivision containing not more than twenty-four parcels, any

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1 one of which is less than ten acres in size;

2 [Q-] R. "type-four subdivision" means any
 3 subdivision containing twenty-five or more parcels, each of
 4 which is ten acres or more in size; and

5 [R-] S. "type-five subdivision" means any
 6 subdivision containing not more than twenty-four parcels, each
 7 of which is ten acres or more in size."

8 Section 2. Section 47-6-9 NMSA 1978 (being Laws 1973,
 9 Chapter 348, Section 9, as amended) is amended to read:

10 "47-6-9. SUBDIVISION REGULATION--COUNTY AUTHORITY.--

11 A. The board of county commissioners of each county
 12 shall regulate subdivisions within the county's boundaries. In
 13 regulating subdivisions, the board of county commissioners of
 14 each county shall adopt regulations setting forth the county's
 15 requirements for:

16 (1) preliminary and final subdivision plats,
 17 including their content and format;

18 (2) quantifying the maximum annual water
 19 requirements of subdivisions, including water for indoor and
 20 outdoor domestic uses;

21 (3) assessing water availability to meet the
 22 maximum annual water requirements of subdivisions;

23 (4) water conservation measures;

24 (5) water of an acceptable quality for human
 25 consumption and for protecting the water supply from

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- 1 contamination;
- 2 (6) liquid waste disposal;
- 3 (7) solid waste disposal;
- 4 (8) legal access to each parcel;
- 5 (9) sufficient and adequate roads to each
- 6 parcel, including ingress and egress for emergency vehicles;
- 7 (10) utility easements to each parcel;
- 8 (11) terrain management;
- 9 (12) phased development;
- 10 (13) protecting cultural properties,
- 11 archaeological sites and unmarked burials, as required by the
- 12 Cultural Properties Act;
- 13 (14) specific information to be contained in a
- 14 subdivider's disclosure statement in addition to that required
- 15 in Section 47-6-17 NMSA 1978;
- 16 (15) reasonable fees approximating the cost to
- 17 the county of determining compliance with the New Mexico
- 18 Subdivision Act and county subdivision regulations while
- 19 passing upon subdivision plats;
- 20 (16) a summary procedure for reviewing certain
- 21 type-three and all type-five subdivisions as provided in
- 22 Section 47-6-11 NMSA 1978;
- 23 (17) recording all conveyances of parcels with
- 24 the county clerk;
- 25 (18) financial security to assure the

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1 completion of all improvements that the subdivider proposes to
 2 build or to maintain;

3 (19) fencing subdivided land, where
 4 appropriate, in conformity with Section 77-16-1 NMSA 1978,
 5 which places the duty on the purchaser, lessee or other person
 6 acquiring an interest in the subdivided land to fence out
 7 livestock; and

8 (20) any other matter relating to subdivisions
 9 that the board of county commissioners feels is necessary to
 10 promote health, safety or the general welfare.

11 B. Subsection A of this section does not preempt
 12 the authority of any state agency to regulate or perform any
 13 activity that it is required or authorized by law to perform.

14 C. Nothing in the New Mexico Subdivision Act shall
 15 be construed to limit the authority of counties to adopt
 16 subdivision regulations with requirements that are more
 17 stringent than the requirements set forth in the New Mexico
 18 Subdivision Act, provided that:

19 (1) the county has adopted a comprehensive
 20 plan in accordance with Section 3-21-5 NMSA 1978;

21 (2) the comprehensive plan contains goals,
 22 objectives and policies that identify and explain the need for
 23 requirements that are more stringent; and

24 (3) the more stringent regulations are
 25 specifically identified in the comprehensive plan.

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1 D. The board of county commissioners of a class A
2 county with a population according to the most recent federal
3 decennial census of greater than three hundred thousand may
4 delegate the authority to review and approve preliminary
5 plats and final plats to a county administrative officer or
6 to the planning commission; provided that the delegation
7 complies with the public hearing requirements contained in
8 Section 47-6-14 NMSA 1978."

9 Section 3. Section 47-6-15 NMSA 1978 (being Laws 1973,
10 Chapter 348, Section 15, as amended) is amended to read:

11 "47-6-15. APPEALS.--

12 A. A party who is or may be adversely affected
13 by a decision of a delegate of the board of county
14 commissioners [~~in approving or disapproving a final plat~~
15 ~~under summary review~~] shall appeal the delegate's decision to
16 the board of county commissioners within thirty days of the
17 date of the delegate's decision. The board of county
18 commissioners shall hear the appeal and shall render a
19 decision within thirty days of the date the board receives
20 notice of the appeal. Thereafter, the procedure for
21 appealing the decision of the board of county commissioners
22 set out in Subsection B of this section shall apply.

23 B. A party who is or may be adversely affected by
24 a decision of the board of county commissioners [~~in approving~~
25 ~~or disapproving a preliminary or final plat~~] may appeal to

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1 the district court pursuant to the provisions of Section
2 39-3-1.1 NMSA 1978."

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